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CLERK OF DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NUNC PRO TUNC

SEP 3 2008

BY  DEPUTY

Maria R. Metcalf  
Dennis R. Gray  
Plaintiffs in proper  
954 Surrey Drive  
Chula Vista, CA 91902

Maria R. Metcalf, plaintiff  
Dennis R. Gray, plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARIA R. METCALF, )  
DENNIS R. GRAY )  
Plaintiff, )  
v. )  
CASE NO. 3-08-CV-00731-W-POR

DREXEL LENDING GROUP, a )  
California corporation, OLD )  
REPUBLIC TITLE COMPANY, a )  
California corporation, AURORA )  
LOAN SERVICES LLC, a )  
California limited liability company; )  
MORTGAGE ELECTRONIC )  
REGISTRATION SYSTEMS, INC., )  
a Delaware corporation, and )  
ROBERT E. WEISS )  
INCORPORATED, a California )  
Corporation, )  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT OR  
ALTERNATIVE MOTION FOR  
A MORE DEFENITE STATEMENT.

DATE: SEPT 15, 2008

TIME: 10:30 AM.

Courtroom: 7

JUDGE: Hon. THOMAS J. WHELAN.  
NO HEARING DATE SET

Plaintiffs Maria R. Metcalf and Dennis Gray, filed the first amended complaint on issues presented in Metcalf's complaint on July 22, 2008. Plaintiffs have lived as domestic partners in the subject property at 954 Surrey Drive, Chula Vista, CA 91902 since 1991. When the property was refinanced the property was transferred go Maria's name as stated in the transfer

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1 deed for purposes of refinancing only. This transfer did not sever or limit Dennis Gray's 50%  
2 ownership rights to protect his property interests and contractual agreement with Metcalf. In fact  
3 it is Gray's monies that were tendered in this matter. Accordingly, Gray is a necessary plaintiff  
4 in this action..  
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6 This opposition is addressed to each of the defendants' motions to dismiss simultaneously  
7 set for hearing. Plaintiffs recognize the position of Aurora as a servicer avoids liability as an  
8 agent of lenders, however they understood that Aurora was the party doing the foreclosure. To  
9 the extent that AURORA is merely an agent with no liability for its actions, plaintiffs are willing  
10 to amend their complaint with more specificity to omit AURORA from the action without  
11 prejudice to recall them as a defendant in the event that their activities are construed to be  
12 outside of such agency.  
13

14 Defendants wrongfully attempt to escape their liability under the pretext tht Gray has no  
15 interest in the subject property and no standing to sue. In fact, it is Gray who made the  
16 payments on the property and built the home with his own labor.  
17

18 This foreclosure sale is illegal. Plaintiffs' case involves the nondisclosure and illegal acts  
19 of the defendant lenders. Plaintiffs believes that they are attempting to put Plaintiffs in a  
20 precarious position by selling the property out from under them thus adding more confusion to  
21 complicate this matter. Defendant did an illegal foreclosure sale without an order or review by  
22 any court to determine ownership and any right to seek a foreclosure. The court must adjudicate  
23 issues of nondisclosure, TILA's three year extended statute of limitations, foreclosure which was  
24 executed without true ownership proof provided with production of the original wet ink signature  
25 note and no change by securitization of the note. The chain of ownership for purposes of  
26 executing a foreclosure did not exist. The foreclosure was illegal; the creditor had no standing to  
27 foreclose and did not show proof of ownership required by law. Simultaneously filed is  
28

1 Plaintiffs' Request for Judicial Notice of the primary basis of non disclosure and required proof  
2 of ownership necessary to proceed with a foreclosure.

3 This sale is illegal. The court must grant an equitable stay of execution until the  
4 adjudication of the facts of ownership by proof with production of the original wet ink signature  
5 note and reversal of the illegal acts complained of by plaintiffs.

6 Ownership status required at the time of the foreclosure did not exist as there was no  
7 holder in due course. Plaintiffs believe the note was securitized and that act severed the chain of  
8 ownership. Before proceeding with a foreclosure Defendants must produce the original wet  
9 signature promissory note to the court. The court must determine if there is a right of disclosure.  
10 Further a proper accounting must be made as the nature of the transaction is contrary to GAAP  
11 (Generally Accepted Accounting Principles) to determine the correct loan charges.

12 In determining whether a wrongful disclosure is unfair or deceptive acts or  
13 unlawful practices and violate Federal and state statutes and codes, the court is  
14 required to take into account representations made or suggested as well as the extent  
15 to which the defendant fails to reveal facts material in light of such representations or  
16 material with respect to consequences which may result from the conditions as are  
17 customary or usual. Where such an act(s) violates Federal and state statutes and  
18 codes, the court of law and the court of statutory procedures has no enforcement  
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20 If Defendants are not the holder in due course ("HIDC"), the court is being told  
21 that they have a right to foreclosure when they do not. The only one with foreclosure  
22 rights is the HIDC. To be the HIDC you must have the original wet ink signature note.  
23 All others are Holder for Value ("HFV") and have very limited rights.  
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25 The court must not determine or confirm a foreclosure sale if:  
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27 (1) title is misrepresented and/or there is no commercial sale;

28 (2) the original, unaltered note is not produced;

1 (3) there is a holder in due course, not simply a holder for value; and/or

2 (4) there is illegal securitization; and

3 (5) the contract terms were unconscionable and/or statutory violations are  
4 determined by wrongful foreclosure sale which was conducted fraudulently, or justice  
5 otherwise was not done.  
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7 Plaintiffs have identified the known date of the incident and the activities prior to  
8 the incident. Specific facts are anticipated to be disclosed in discovery. Because the  
9 defendants directly or indirectly caused or had employees and/or agents who were  
10 present during the incident, the court may reasonably find that they participated in the  
11 incident. See, Rutherford v. Berkeley, 780 F.2d 1444, 14448 (9<sup>th</sup> Cir. 1986).  
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13 Defendant has no proven right or legal authority to foreclose on plaintiff's real  
14 property. A copy of the note does not suffice. Defendant's intentional misrepresentation  
15 of their fraud on the consumer and their false representations to the court constitutes a  
16 fraud on the court.  
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18 1. FORECLOSURE REQUIRES THE ORIGINAL NOTE.

19 Defendant's long standing practice of non judicial foreclosure does not equate with  
20 legal compliance. Plaintiff provides the court a concrete indication of the manner in  
21 which the defendant enforces its deception mandate. In doing so plaintiffs raise  
22 concerns that about the meaning of deception where defendant alleges it owns the  
23 promissory note and the original contract. This court is compelled to stop defendants at  
24 the gate.

25 2. NO EVIDENCE OF HOLDER IN DUE COURSE IN POSSESSION OF NOTE:

26 There is no competent evidence before the court that (1) any party is the holder of  
27 the alleged note or the true holder in due course and (2) an audit accounting to prove  
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1 that a certain balance is due and owing on any alleged note. Of course, no tender can  
2 be submitted without an audited correct accounting.

3 Unequivocally Federal and state courts rule is that in order to prove the  
4 "instrument" possession is mandatory.

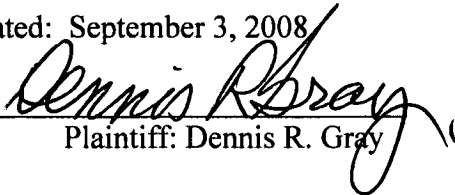
5 3. NO EVIDENCE OF AUDIT ACCOUNTING PROVING CLAIM OF DAMAGES.

6 In addition another necessary element of proof is: a claim of damages, i.e. an  
7 accounting that is signed and dated by the person who is responsible for the account  
8 incorporating the general ledger and accounting. Discrepancies and overcharges and  
9 excess fees demand an audit.

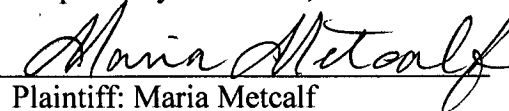
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12 Here the lender has only supplied documents showing an intent to convey the rights in  
13 the mortgages rather than proof of ownership as of the foreclosure date. Defendant  
14 arguments of legal standing fall short. The court is compelled to stop their weak legal  
15 arguments.

16 Here Lender defendants, as a matter of law, are obligated to properly account and  
17 pay out statutory violations and damages to plaintiff. Accordingly, the complaint and  
18 its causes of action are properly pled and/or the court must grant plaintiffs leave to  
19 amend their pleading. The court must deny the motions to dismiss the complaint.  
20

21 Dated: September 3, 2008

22   
23 Plaintiff: Dennis R. Gray

21 Respectfully submitted,

22   
23 Plaintiff: Maria Metcalf

**CERTIFICATE OF SERVICE**

I, Margilina Goudie hereby certify this 1st day of August 2008 I caused a true and correct copy of the foregoing Opposition to the Motion to Dismiss. or Alternatively, Motion for a More Definitive Statement to be mailed to the interested parties as follows:

Defendant DREXEL LENDING GROUP at 8200 Haven Avenue, Suite 2109, Rancho Cucamonga, CA 91730, upon Defendant OLD REPUBLIC TITLE COMPANY at 9645 Granite Ridge Drive, Suite 300 San Diego CA 92123, upon Defendant MERS at PO Box 2026, Flint MI 48501, upon Defendant ROBERT E. WEISS INCORPORATED at 920 South Village Oaks Drive, Covina, CA 91724 and upon Defendant AURORA LOAN SERVICES LLC by serving JAMES T. LEE, ESQ attorney for Defendant AURORA at Law Offices of Robert E. Weiss Incorporated at 920 South Village Oaks Drive, Covina, CA 91724.

By Margilina Goudie ,

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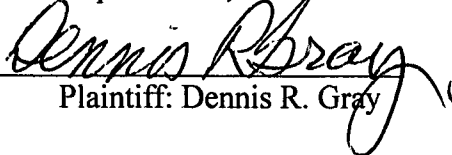
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